



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

REGION 5

77 WEST JACKSON BOULEVARD

CHICAGO, IL 60604-3590

EPA Region 5 Records Ctr.



345283

REPLY TO THE ATTENTION OF:

OCT 20 2009

URGENT LEGAL MATTER

CERTIFIED MAIL: RETURN RECEIPT REQUESTED

The Sherwin-Williams Company
c/o Kim K. Burke
Taft Stettinius & Hollister LLP
425 Walnut Street, Suite 1800
Cincinnati, Ohio 45202-3957

T.L. Diamond & Company., Inc.
c/o John M. Ix
Dechert LLP
Cira Centre
2929 Arch Street
Philadelphia, PA 19104-2808

Eagle-Picher Industries, Inc.
c/o Karen A. Winters
Squire, Sanders & Dempsey LLP
2000 Huntington Center
41 South High Street
Columbus, Ohio 43215

Re: Eagle Zinc Company Site
Hillsboro, Illinois (the "Site")

Dear Mr. Burke, Mr. Ix and Ms. Winters:

This letter notifies your clients that the United States Environmental Protection Agency (U.S. EPA) has determined not to use special notice procedures pursuant to Section 122(e) of the Comprehensive Environmental Response, Compensation, and Liability Act, as amended (CERCLA), 42 U.S.C. §9622(e) at the above-referenced Site regarding the Remedial Design/Remedial Action of the interim remedy selected in U.S. EPA's Record of Decision issued on September 16, 2009.

NOTICE OF POTENTIAL LIABILITY

As indicated in the general notice letters previously sent to your clients, U.S. EPA has evaluated information in connection with the investigation of the Site and U.S. EPA has information indicating that your clients may be potentially responsible parties (PRPs) as defined at Section 107(a) of the CERCLA, 42 U.S.C. 9607(a), with respect to hazardous substances at this Site. Potentially responsible parties under CERCLA include current and former owners and operators of the Site as well as persons who arranged for disposal or treatment of hazardous substances sent to the Site, or persons who accepted hazardous substances for transport to the Site.

DECISION NOT TO USE SPECIAL NOTICE

In this instance U.S. EPA has decided that it is inappropriate to invoke the Section 122(e) special notice procedures. U.S. EPA believes that using such special notice procedures would not facilitate an agreement between U.S. EPA and the PRPs and would not expedite the response action at the Site. Past dealings with The Sherwin-Williams Company strongly indicate that it is not willing to perform response activities at the Site without the participation of other PRPs, although it is willing to discuss cost recovery settlement. U.S. EPA has reached a settlement with T.L. Diamond & Company, Inc. and provided it with a covenant not to sue based on T.L. Diamond & Company, Inc.'s limited ability to pay. Eagle-Picher Industries, Inc. has filed for bankruptcy and so is unlikely to have financial resources to conduct the remedial action. The decision not to use the special notice procedures does not preclude the PRPs from entering into discussions with U.S. EPA regarding their participation in response activities, or resolution of their liability at the Site. This decision simply means that U.S. EPA will not use the special notice procedures to govern any future discussions. U.S. EPA encourages all PRP offers regarding settlement of this matter and cleanup of this Site.

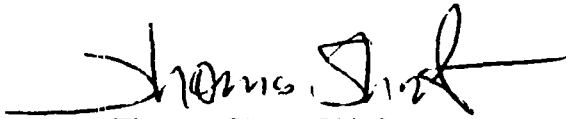
ADMINISTRATIVE RECORD

Pursuant to CERCLA Section 113(k), U.S. EPA must establish an administrative record that contains documents that form the basis of U.S. EPA's decision on the selection of a response action for a site. The administrative record files, which contain the documents related to the remedial action selected for this Site, are available to the public for inspection and comment at the Superfund Records Center, U.S. EPA Region 5, 77 W. Jackson Blvd., Chicago, Illinois 60604.

EPA CONTACT

If you have any questions pertaining to this matter, please direct them to Thomas Krueger, Associate Regional Counsel, 77 W. Jackson Blvd., Chicago, Illinois 60604-3590, (312) 886-0562, Krueger.Thomas@epa.gov.

Sincerely,

A handwritten signature in black ink, appearing to read "Thomas Short", with a long horizontal flourish extending to the right.

Thomas Short, Chief
Remedial Response Branch #2

cc: Nefertiti Simmons, SFD
Thomas Krueger, ORC
Justin Savage, U.S. DOJ